
FLETC DIRECTIVE (FD)

NUMBER: 65-50A

Subject:

DATE: 04-04-00

PREMIUM PAY

SUNSET REVIEW DATE: 04-04-04

1. PURPOSE.

Because of the complexity of operations and training at the Federal Law Enforcement Training Center (FLETC), work beyond an employee's ordinary tour of duty may be required to meet training and other needs. Accordingly, managers are responsible for properly approving, scheduling, and documenting the tours of duty of their employees so that they can be properly compensated under the Federal law.

This directive provides guidance for the payment of additional pay to employees of the FLETC for performing overtime, night, holiday, and Sunday work; for performing standby duty or administratively uncontrollable overtime work (AUO), and for satisfying the statutory requirements for the payment of law enforcement availability pay LEAP).

2. SCOPE. The provisions of this directive apply to Federal employees, by OPM regulation, paid either directly or indirectly by the FLETC whose basic rate of pay does not equal or exceeds the maximum applicable rate for grade GS-15. Premium pay may be paid to an employee whose basic rate is less than the maximum applicable rate of GS-15 only to the extent that the payment does not cause the total rate of pay for any pay period to exceed the maximum applicable rate for GS-15.

A law enforcement officer may receive premium pay only to the extent that the payment will not cause the total of the employee's basic pay and premium pay (including AUO pay; regularly scheduled overtime pay; night, Sunday, or holiday pay; and hazardous duty pay) for any biweekly pay period to exceed the lesser of:

a. 150 percent of the minimum rate for GS-15, including a locality-based comparability payment under 5 U.S.C. 5304 or special pay adjustment under section 404 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101-509) and any special salary rate established under 5 U.S.C. 5305; or

b. The rate payable for level V of the Executive Schedule. Employees covered by the Fair Labor Standards Act (i.e., nonexempt employees) are not subject to such limitations.

3. CANCELLATION. This directive supersedes FLETC Directive No. 65-50A Overtime, Compensatory Time and Holiday Pay, dated January 18, 1990.

4. REFERENCES.

- A. Public Law 93-259, 93rd Congress S-2747, April 8, 1974, Fair Labor Standards Act.
- B. Title 5 United States Code Chapter 55
- C. Title 5 Code of Federal Regulations (CFR), Part 550 and 551
- D. Department of the Treasury Human Resources Directive Manual, Chapter 550.3, dated January 13, 1995
- E. FLETC Directive No. 66-00, General Policies Concerning Time and Attendance.
- F. FLETC Directive No. 66-30, Absence and Leave.
- G. Standard Operating Procedures, Administratively Uncontrollable Overtime

5. DEFINITIONS.

a. Administrative Workweek - Any period of 7 consecutive days (as defined in this section) designated in advance by the head of the agency under section 6101 of title 5, United States Code.

b. Basic workweek - for full-time employees, means the 40-hour workweek established in accordance with Sec. 610.111 of title 5, Code of Federal Regulations.

c. Compensatory Leave - Compensation for irregular or occasional overtime work performed by an employee in the form of time off from the employees tour of duty.

d. Exempt Employee - An employee who is not covered by the minimum wage and overtime provisions under the FLSA. These employees are covered by the provisions stated in 5 C.F.R. Section 550.

e. Federal Employees Paid Directly by the FLETC - Personnel who are employed and paid by the FLETC.

f. Federal Employees Paid Indirectly by the FLETC - Personnel detailed to the FLETC from another Federal organization, paid directly by their parent organization, with subsequent reimbursement by the FLETC.

g. Holiday Work - Regularly scheduled non-overtime work performed by an employee on a day designated by Federal statute or Executive Order as a holiday.

h. Irregular or Occasional Overtime - Work that is unscheduled in an employee's regularly scheduled administrative workweek. The work is required to handle a situation that could not reasonably have been foreseen and, therefore, could not have been scheduled and approved in advance. It is also work that is not part of an employee's regularly scheduled administrative workweek which could not be accomplished during the normal workday (e.g., an instructor remaining after class to answer questions).

i. Night Work - Regularly scheduled work performed by an employee between the hours of 6 p.m. and 6 a.m.

j. Non-Exempt Employee - An employee who is covered by the minimum wage and overtime provisions under the Fair Labor Standards Act (FLSA).

k. Overtime Work - Work in excess of eight (8) hours in a day or in excess of 40 hours in an administrative workweek that is officially ordered or approved and performed by an employee.

l. Rate of Basic Pay - the rate of pay fixed by law or administrative action for the position held by an employee.

m. Regular Overtime Work - Overtime work that is part of an employee's regularly scheduled administrative workweek which has been scheduled and approved in advance of the administrative workweek and for which compensation will be paid.

n. Regularly Scheduled Administrative Workweek - for a full-time employee, means the period within an administrative workweek within which the employee is regularly scheduled to work.

o. Sunday Work - Regularly scheduled non-overtime work during a regularly scheduled daily tour of duty when any part of that daily tour of duty is on a Sunday.

6. POLICIES.

a. Overtime work

(1) Overtime work will be performed only in those instances where it is clearly in the best interest of the Government. Part 610 of 5 C.F.R. requires the head of an agency to schedule an employee's regularly scheduled administrative workweek so that it corresponds with the employee's actual work requirements. Overtime should be authorized only if there cannot be an adjustment in working schedules and if it is absolutely necessary to perform the work beyond the employee's regularly scheduled administrative workweek. Overtime work is earned and credited in increments of quarters of hours.

(2) Regular overtime work must be scheduled in advance of the administrative workweek and must be authorized by the appropriate supervisor prior to performance. All irregular or occasional overtime work which is deemed necessary by the supervisor to satisfy an unexpected situation that could not reasonably have been foreseen must be followed with written justification and request for approval the next workday after performance of the overtime. The justification and request for approval shall be prepared by the employee who performed the overtime work. Under FLSA, any overtime work performed by a non-exempt employee, whether authorized or not, is working time if the supervisor knows, or has reason to believe, it is being performed. "Suffered or permitted" overtime, as this is designated, is strongly discouraged.

(3) A GS employee whose rate of pay does not exceed the minimum applicable rate for a GS-10, the overtime hourly rate is one and one-half times the employee's hourly rate of pay. For each GS employee whose rate of basic pay exceeds the minimum applicable rate for a GS-10, the overtime hourly rate is one and one-half times the hourly rate of basic pay at the minimum applicable rate for a GS-10. Regular overtime is authorized for full-time, part-time, and intermittent GS employees. The overtime hourly rate for wage grade employees is one and one-half times the employee's hourly rate of pay.

(4) A Law Enforcement Officer is an employee whose duties of his/her position are primarily the investigation, apprehension, or detention of individuals suspected or convicted of offenses against the criminal laws of the United States, including an employee engaged in this activity who is transferred to a supervisory or administrative position. Law Enforcement Officers whose basic rate of pay exceeds the minimum overtime rate for GS-10 earn the greater of one and one-half times the hourly rate of basic pay at the minimum applicable rate for a GS-10 or his/her basic hourly rate.

(5) Non-exempt employees will be paid for all irregular or occasional overtime work unless the employee requests compensatory time off from a scheduled tour of duty.

(6) Management may order exempt employees whose basic pay is in excess of the maximum rate of basic pay for a GS-10, to earn overtime pay instead of compensatory time off for irregular or occasional overtime work. In no instance will overtime and/or compensatory time for any pay period be permitted to exceed the ceiling imposed under Title 5, United States Code Section 5547.

(7) Compensatory time off should not exceed an accrued total of 40 hours at any one time. Compensatory time off must be used before using annual leave, unless the annual leave will be subject to forfeiture. Compensatory time should be used within 12 pay periods or six months after the pay period in which it was earned. If an exempt employee fails to take the compensatory time off within six months, the employee loses rights to the compensatory time off and overtime pay unless the failure was due to an exigency of the service beyond his/her control. Conversely, if a non-exempt employee fails to take the compensatory time off within six months, he/she must be paid for overtime work at the overtime rate in effect for the work period in which it was earned.

(8) Time spent traveling by a non-exempt employee shall be considered as hours of work if the travel occurs during the employee's regularly scheduled working hours or if the employee must drive a vehicle or perform other work while traveling. Also, time spent traveling as a passenger on a one day assignment away from his/her official duty station or as a passenger on an overnight assignment during regular working hours on a non-workday are considered as hours of work. Accordingly, a non-exempt employee will be paid overtime pay for all hours of travel that correspond with his/her normal work hours when the travel takes place during normal work hours on a non-workday. Conversely, a non-exempt employee will not be paid overtime pay for all hours of travel that takes place outside his/her normal work hours unless the employee is required to drive a vehicle or perform work while traveling.

(9) For pay purposes, time spent traveling by an exempt employee shall be considered as hours of work only when the travel is within the employee's regularly scheduled administrative workweek or if the travel involves the performance of actual work while traveling. Also, the employee is considered in a duty status if the travel is incident to travel that involves the performance of work while traveling; or, if the travel is carried out under such arduous and unusual conditions that the travel is inseparable from work. Lastly, the employee is considered in a duty status if the travel results from an event which could not be scheduled or controlled administratively. Specifically, an exempt employee will be paid overtime pay for all periods of travel during non-work hours or on non-work days if the event is outside of the control of the Executive Branch of the Government.

Conversely, an exempt employee will not be paid overtime pay for all periods of travel during non-work hours or on non-work days if the event is within the control of the Executive Branch of the Government.

(10) Call-back overtime is unscheduled overtime work performed by an employee on a day when work was not scheduled for him/her, or for which he/she is required to return to his/her place of employment after a daily tour of duty. Call back assignments will be considered to be at least two (2) hours in duration for the purpose of overtime or holiday pay, whether or not work is performed.

b. Night Pay and Night Shift Differential

(1) General Schedule employees earn night pay at a rate of 10 percent of the hourly basic rate when he/she performs regularly scheduled work between 6 p.m. and 6 a.m. An employee is entitled to night pay for a period of paid leave only when the total amount of that leave in a pay period, including both night and day hours, is less than 8 hours. Exceptions to this rule are employees on court leave, military leave, holiday leave, and time off awards. Night pay is payable for overtime work between the hours of 6 p.m. and 6 a.m. if the overtime is regularly scheduled in advance of the administrative workweek.

(2) Federal Wage System employees will receive night shift differential at the rate of 7.5 percent of their hourly rate for non-overtime work when a majority of his/her scheduled hours occur between 3 p.m. and midnight, or 10 percent of their hourly rate for non-overtime work when the majority of scheduled hours occur between 11 p.m. and 8 a.m.. An employee may be paid night shift differential only when 5 or more hours of the regularly scheduled 8-hour shift (including meal periods) occur during the hours specified. Shift differential is also payable when an employee is excused from duty on a holiday, in an official travel status during the hours of the regular shift, on paid leave such as court leave, military leave, and holiday leave, or when he/she is temporarily assigned to a different tour of duty.

c. Pay for Holiday Work. An employee who performs work on a day designated by Federal statute or Executive Order as a holiday is entitled to pay at the rate of basic pay plus premium pay at a rate equal to the rate of the basic pay, for that holiday work which is not in excess of the scheduled tour of duty or overtime work. An employee required to perform any work on a designated holiday is entitled to pay for at least two hours of holiday work. An employee who performs overtime work on a designated holiday is entitled to pay for that overtime work at his/her respective overtime pay rate. For an employee working a flexible work schedule, holiday pay for non-overtime work is limited to 8 hours in a day. Similarly, an employee working a compressed work schedule is limited to holiday pay for non-overtime work equal to the number of hours normally scheduled for that day.

d. Pay for Sunday Work. Sunday premium pay is additional pay paid to full-time employees whose regularly scheduled basic workweek includes Sunday. Sunday premium pay is payable at a rate of 25 percent of the employees basic hourly rate and is payable for the entire period of non-overtime work for each daily tour of duty that includes Sunday. The maximum number of hours of Sunday premium pay that an employee can be paid for one Sunday is 16 hours. A full-time employee on a flexible work schedule who performs regularly scheduled non-overtime work during a period of duty, a part of which is performed on Sunday, is entitled to Sunday premium pay for the entire period of duty, not to exceed 8 hours. A full-time employee on a compressed work schedule who performs non-overtime work during a period of duty, a part of which is performed on Sunday, is entitled to Sunday pay for his or her entire

period of duty on that day.

e. Regularly Scheduled Standby Duty. Employees in a position requiring them to remain at, or within the confines of, their official duty station during longer than ordinary periods of duty, can receive premium pay on an annual basis. Employees on standby duty must spend a substantial part of their tour of duty remaining in a standby status rather than performing work. Premium pay is determined as an appropriate percentage (not in excess of 25 percent) of such part of the rate of basic pay for the position that does not exceed the minimum applicable rate of basic pay for GS-10.

f. Administratively Uncontrollable Overtime Work (AUO)

(1) Premium pay may be paid on an annual basis (except premium pay for regular overtime work and work at night, on Sundays, and on holidays) when an employee is in a position in which the hours of duty cannot be controlled administratively. The position requires the employee to work substantial amounts of irregular or occasional overtime duty with the employee generally being responsible for recognizing, without supervision, circumstances which require the employee to remain on duty.

(2) The FLETC Director has authorized AUO for Training Division Chiefs, Branch Chiefs, Instructors, Program Managers, Program Specialists, Athletic Trainers, and members of the Special Investigations and Security Division (SISD). Other positions may be recommended by the Associate Director for Training (ADT) or the Associate Director for Planning and Resources (APR) and approved by the Director. Annually, the Associate Directors will review and recommend positions to the Director for certification. A position is authorized AUO when all of the following criteria are met:

(a) The hours of duty cannot be controlled administratively. This means the irregular overtime requirements of the position are of such an unpredictable nature that they cannot be controlled through normal administrative and work scheduling procedures. The inability to administratively control must be an inherent part of the position's assigned duties and responsibilities. Difficulty in scheduling or administratively controlling the hours of duty is not sufficient grounds for asserting that the hours of duty cannot be controlled administratively. Evidence of overtime work that may not be irregular or occasional in nature may include overtime work that is performed at the same time each day over an extended period of time, on the same day each week, or performed immediately prior to or following the employee's basic daily tour of duty on a regular basis.

(b) Substantial amounts of irregular or occasional overtime work are required. This means irregular or occasional overtime work averages at least three (3) hours a week. Additionally, there is a continual requirement to perform irregular or occasional overtime work, generally lasting more than once a week. Moreover, there is a definite basis for anticipating that the irregular or occasional overtime work will continue over an appropriate period with, as previously mentioned, a duration of at least three (3) hours a week and a frequency lasting more than once a week.

(c) The employee is generally responsible for recognizing, without supervision, circumstances which require the employee to remain on duty. This means that the employee must remain on duty not merely because it is desirable, but because the responsibility for the employee to remain on duty is a definite, official, and special requirement of the position. Moreover, there must be compelling reasons inherently related to continuance

of his/her duties, and those reasons are of such a nature that the employee's failure to carry out such work would constitute negligence by the employee. Furthermore, the employee is required to continue on duty in continuation of a full daily tour of duty or that after the end of his/her regular workday, he/she resumes duty in accordance with a prearranged plan or an awaited event. In these cases, the employee has no choice as to when or where he/she may perform the work when he/she remains on duty in continuation of a full daily tour of duty.

(d) Employees who occupy a position that qualifies for AUO may not be working an alternate work schedule (AWS). However, those employees may voluntarily elect not to receive pay for AUO work. Thus, those employees will be paid premium pay for overtime in accordance with law and government-wide regulations.

(3) DETERMINING THE APPROPRIATE RATE OF AUO PAY. When a position is authorized premium pay for AUO, the employee will be paid at one of the following percentages of his/her basic rate:

(a) A position that requires an average of at least 3, but not more than 5, hours a week of irregular or occasional overtime work qualifies for 10 percent;

(b) A position that requires an average of over 5, but not more than 7, hours a week of irregular or occasional overtime work qualifies for 15 percent;

(c) A position that requires an average of over 7, but not more than 9, hours a week of irregular or occasional overtime work qualifies for 20 percent;

(d) A position that requires an average of over 9 hours a week of irregular or occasional overtime work qualifies for 25 percent.

g. Law Enforcement Availability Pay (LEAP).

(1) Premium pay paid to employees in positions properly classified as GS-1811 (Criminal Investigation) and GS-1812 (Game Law Enforcement) and to pilots of the U.S. Customs Service required to work substantial amounts of unscheduled duty. Substantial amounts means the Criminal Investigator has an annual average of 2 or more hours of unscheduled duty per regular workday. Unscheduled duty means those hours when a Criminal Investigator performs work, or is determined by the agency to be available to perform work, that are not part of the Criminal Investigator's basic 40-hour workweek and are not regularly scheduled overtime hours, excluding the first 2 hours of overtime work on a basic workday. A Criminal Investigator may receive LEAP if he/she holds a supervisory or administrative position that has been officially approved as a secondary position under the Law Enforcement Officer retirement provisions, even if the criminal investigator is not personally covered by those provisions. A Criminal Investigator earns LEAP at fixed rate equal to 25 percent of his/her rate of pay.

(2) A Criminal Investigator receiving LEAP may not receive AUO or overtime pay under the FLSA. However, a Criminal Investigator receiving LEAP may receive overtime pay in accordance with the overtime provisions of Title 5 but only for overtime work scheduled in advance of the administrative workweek that is either in excess of 10 hours on a day during the employee's basic 40-hour workweek or on a day that does not include part of the employee's basic 40-hour workweek.

7. RESPONSIBILITIES.

a. Each manager and supervisor is responsible for accomplishing work requirements in the most cost effective and efficient way. Accordingly, each is responsible for approving and controlling overtime work for his/her area of responsibility. Consequently, managers and supervisors must evaluate the work performed by positions that require a substantial amount of overtime work to ensure that payment of overtime, compensatory time off, and/or other types of premium pay are justified and covered by allocated funds.

b. The Finance Division (FIN) will monitor the reporting of overtime earned and the payment of premium pay. The FIN shall generate reports of overtime costs which will allow analysis and evaluation of those elements of the Center using overtime.

8. OFFICE OF PRIMARY INTEREST. Human Resources Division, Planning and Resources Directorate.

W. Ralph Basham
Director